

## **ORISSA HIGH COURT: CUTTACK**

**O.J.C NO.5085 OF 1995**

(In the matter of an application under Articles 226 and 227 of the Constitution of India)

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Brundaban Mahapatra

..... *Petitioner*

-Vs-

Director of Estates and Ex-officio Deputy  
Secretary to Government, General Administration  
Department and another

..... *Opp. Parties*

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For Petitioner : M/s. M.Ghosh and R.M.Dash

For Opp. Parties : M/s S.K.Nayak, D.Nayak, A.C.Biswal,  
T.Routray and R.Mohanty

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### ***P R E S E N T :***

***THE HONOURABLE KUMARI JUSTICE S.PANDA  
AND  
THE HONOURABLE DR. JUSTICE B.R.SARANGI***

Date of Judgment : 05.8.2013

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**S.Panda, J.** This Writ Petition has been filed by the petitioner challenging the action of the opposite parties in not delivering possession of the land measuring Ac.0.060 decimals under Plot No.B-1, drawing No.B-322, Unit No.28, Bhubaneswar as per lease deed dtd.14.2.1994 executed on 22.7.1994 between the petitioner and opposite party no.1.

2. The brief facts of the case are that the petitioner being a Sevayat of Lord Lingaraj, Bhubaneswar was allotted with a land measuring an area of Ac.0.60 decimals

of Lord Lingaraj, Bhubaneswar on 90 years lease basis appertaining to Plot No.B-1, Unit No.28 as per drawing No.B-322 by the Director of Estate – opposite party no.1 vide order No.5188/CA dtd.30.3.1990. Prior to merger of estate, the Endowment Commissioner accorded sanction under Section 19 of the Odisha Hindu Religious Endowment Act, 1951 to lease out the land for residential purposes to some Sevayats of Lord Lingaraj on nominal salami and rent. Before merger some Sevayats registered their lease deed and got the lands recorded in their favour but some Sevayats failed to register the lease deed. On 18.3.1974 the estate of Lord Lingaraj vested with the Government and the Sevayats, who could not get the lease deed executed prior to merger, filed applications before the Government for regularization of their lease and to record the land in their favour. Accordingly, the Chief Minister in a meeting held on 21.2.1987 decided that the claims of Sevayats of Lord Lingaraj, Bhubaneswar for getting Ac.0.60 decimals of land sanctioned in their favour and being in their possession should be carefully examined before confirming any lease. It was also decided that the Sevayats should submit individual applications to the Director of Estates to finally settle the issues. After scrutiny of the applications and land records, lease granted in favour of 129 Sevayats were regularized on the ground that the procedure for allotment of 90 years of lease to the Sevayats clearly indicates that allotment was made basing on the sanction of Endowment Commissioner and possession of the land identified by the lessee. Thereafter, the Director of Estates - opposite party no.1 vide letter dtd.07.8.1989 directed the Planning Member, Bhubaneswar Development Authority to prepare the drawing of the plots based on possession of the Sevayats as it has been decided by Government to lease out Government plots under possession of Sevayats of Lord Lingaraj. Accordingly, the land appertaining to Plot No.B-1 of drawing No.B-322, Unit-28, Bhubaneswar measuring an area of Ac.0.60 decimals was allotted in favour of the petitioner by opposite party no.1 vide order no.5188 dtd.30.3.1990. However, as

opposite party no.1 did not execute the lease deed, the petitioner approached this Court in OJC No.3212 of 1992 which was disposed of on 04.8.1993 with an observation that if the petitioner files due application and undertaking relating to non-transfer and for rendition of Sevapuja before the concerned authority, in such event the concerned authority shall execute the lease deed within three months from the date on which requisite documents are filed before the authority. In pursuance of the said order, the petitioner filed undertaking before the Executive Officer of Lord Lingaraj Temple, Bhubaneswar and accordingly lease deed was executed on 14.2.1994 and registered on 12.9.1994 before the Sub-Registrar, Bhubaneswar.

After execution of the lease deed, the petitioner sent a copy of the Registered Lease Deed to the Addl. Land Officer, General Administrative Department - opposite party no.2 by registered Post with A.D but the said opposite party did not demarcate and deliver possession of the land that too after execution of the lease deed. The petitioner filed a representation before the Addl. Land Officer – opposite party no.2 on 02.12.1994 and sent a reminder on 17.12.1994 but no action was taken for demarcation and delivery of possession of the land. As per the allotment drawing, it is difficult on the part of the petitioner to take possession. Finding no other alternative, the petitioner sent a lawyer's notice to the opposite parties on 04.1.1995 and also sent reminders but as no action has been taken by the opposite parties, this present Writ Application has been filed with a prayer to direct the opposite parties to demarcate the land and deliver possession of the same to the petitioner.

3. A counter affidavit has been filed by the opposite parties taking the stand that the decision taken by the Government to allot land in favour of the Sevayats of Lord Lingaraj clearly indicates that possession of the land to be identified by the lessee on the basis of sanction of Endowment Commissioner prior to vesting. Therefore, possession is

essential condition for allotment of lease, which is clearly reflected in the letter No.1386 dtd.07.8.1989 of the Director of Estates. Accordingly, revenue maps showing plot numbers of the Sevayats was prepared. In pursuance of the decision of the Chief Minister, the petitioner filed an application to regularize the land in his favour as he was in possession of a piece of land sanctioned by the Endowment Commissioner out of Khata No.1878 or 1880 of Mouza – Bhubaneswar. The petitioner has not mentioned exact plot number in his application and submitted xerox copy of the receipts for Rs.180/- dtd.17.7.1971 and Rs.5/- dtd.13.1.1976 as proof of payments towards salami and measurement of land respectively. After receipt of the said application, the possession of the land by the petitioner was enquired through the Inspector and Amins. During field enquiry the petitioner showed and identified a vacant plot, specifically Plot No.572/1 to be in his possession. The same procedure was followed in case of other Sevayats. Out of 129 Sevayats, who claimed to have been granted sanction by the Endowment Commissioner, 79 Sevayats including the petitioner identified plots to be in their possession. After obtaining the said enquiry report, Planning Member of Bhubaneswar Development Authority was requested to prepare a drawing of the plots based on possession of the Sevayats as revealed during field enquiry. Accordingly the Planning Member prepared the drawings basing on the possession of the Sevayats. After receiving the said drawing from the Planning Member, Bhubaneswar Development Authority, the Government executed lease deed for 90 years basing on possession. Therefore, the question of handing over possession to the petitioner as demanded by him does not arise. It is also stated that all other Sevayats, who are in possession of the land and lease deed was executed in their favour have no complaint with regard to possession except the petitioner. It is also contended in the counter affidavit that the petitioner identified an area of Ac.0.60 decimals appertaining to Plot No.2115, Khata No.6 during field enquiry as he was in possession over the said plot. However, nothing

has been reflected in the order of the Endowment Commissioner regarding Plot Number or Khata Number from which an area of Ac.0.60 decimals has been sanctioned in favour of the petitioner. Therefore, opposite party no.1 vide letter No.15592 dtd.26.12.1996 called upon the petitioner to identify the land which is in his possession. However, the petitioner was reluctant to come forward and identify the land which is in his possession, therefore, the opposite parties investigated into the matter and scrutinized thoroughly as to how the petitioner came to in possession of the land which was formed a part of the order No.5188 dtd.30.3.1990. On such investigation and scrutiny, it was found that by practising fraud and manipulation the petitioner got allotment. It was further revealed that the petitioner filed an application under Section 19 (i) of the Odisha Hindu Religious Endowments Act, 1951 before the Endowment Commissioner in the year 1967 for sanction of permanent lease in respect of Plot No.468, Khata No.1878 measuring an area of Ac.0.20 decimals but he has not mentioned any date on the said application. The Endowment Commissioner by order dtd.07.5.1971 rejected the said application of the petitioner but subsequently the petitioner could manage to get an unsigned noting containing the words

“Sanctioned

*vide order dtd.03.12.1970”*

just below the rejection order of the order sheet. In the cases where applications similar to that of the petitioner were sanctioned, the Endowment Commissioner had issued individual permission for transfer of land indicating the details of Khata number and plot number, clearly identifying the sanctioned land. The order dtd.03.12.1970 passed by the Commissioner of Endowments shows the cases of 43 persons, who have been given sanction order under Section 19 of Odisha Hindu Religious Act, however, the case number of the petitioner in the said order has been overwritten by blue ink on the typed copy. Specifically, the number ‘66’ has been overwritten as ‘67’ in the first page of the

said order sheet and the list of sanctioned names of Sevayats appended to the order shows the name of the petitioner at Sl. No.43. The said entry has been typed in a different type machine subsequently. It is stated that these manipulation came to the notice of the opposite parties only after a detailed investigation, scrutiny and verification of records in the office of Endowment Commissioner, Odisha, Bhubaneswar and as the interpolations are apparent on the face of the record of the Endowment Commissioner, this Writ Application is liable to be dismissed.

4. Learned counsel appearing for the petitioner submits that the lease deed executed by the opposite parties on 14.2.1994 clearly stipulate that the lessor will deliver possession of the land to the lessee within a stipulated time and as the opposite parties have not delivered possession of the land the petitioner has filed the present Writ Application. He further submits that the action of the opposite parties are only to delay the matter and the petitioner has approached this Court successively by filing Writ Applications for execution of the lease deed and delivery of possession of the land. The plot allotted to the petitioner is in possession of one Umakanta Garabudu as reveals from the Records of Right published and obtained by the petitioner under the R.T.I Act on 07.6.2011 in respect of Plot No.573, therefore, the petitioner has rightly claimed delivery of possession from the opposite parties.

5. Learned Addl. Government Advocate submits that in view of the fact that the petitioner fraudulently inserted his name in the list of Sevayats at the extreme end of that list, his Writ Application is liable to be rejected. He further submits that from the inception the Government decided that the land under the possession of the Sevayats will be regularized by executing lease deed for a period of 90 years and since the petitioner is not in possession, the question of delivery of possession of the land as claimed by him is liable to be rejected.

6. Considering the rival submission of the parties and after going through the relevant records produced before this Court, it appears that the Commissioner of Endowment by order dtd.03.12.1970 considered 43 cases together as the same are related to the institution i.e. Lord Lingaraj Temple, Bhubaneswar and the applicants are all sabaks thereof. The Commissioner of Endowments relying on the recommendation of the Inspector as well as the Executive Officer that the institution is in financial difficulties and these lands are lying fallow, yielding no income, these transactions are beneficial to the deity, sanctioned Ac.0.60 decimals of land to each out of Khata Nos.1878 and 1880 of Mouza – Bhubaneswar as per recommendation of the Inspector of Endowments on a salami of Rs.3/- per decimal and rent of Rs.25/- per acre subject to the condition that they shall not transfer the lands and shall render Sevapuja, failing which the land shall be reverted to the institution. It further reveals that in the aforesaid order the case numbers were written serially at the top of the order and the name of the applicants were appended in the list according to serial number of the cases. It further appears that after making interpolation in the records of the Endowment Commissioner, the petitioner could manage to obtain the certified copy of the sanction order dtd.03.12.1970 in opposite parties case No.87 of 1967 even though the said case was rejected on 07.5.1971 by the Endowment Commissioner. In the top of the order dtd.03.12.1970 petitioner's application number was mentioned at Sl. No.42 and the case number i.e. "87/66" has been overwritten as "88/67". That apart from the list appended to the order dtd.03.12.1970 shows applicants name and case numbers were written serially as per the case numbers reflected in the 1<sup>st</sup> page of the said order. However, though petitioner's case number was at Sl. No.42 in the 1<sup>st</sup> page of the order but in the list appended to the said order his name was placed at Sl. No.43, which has been typed in a different type machine subsequently.

The above irregularity clearly indicates the interpolation and fraud committed by the petitioner in the order dtd.03.12.1970 passed by the Endowment Commissioner forwarding the name of the petitioner at the last of the list appended to the said order. Since Government has decided that the land under the possession of the Sevayats of Lord Lingaraj, Bhubaneswar will be regularized by executing lease deed for a period of 90 years, the question of delivery of possession to the petitioner does not arise. Therefore, the claim of the petitioner to deliver possession of the land as per the lease deed is misconceived.

The Writ Petition is accordingly dismissed.

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**S.Panda, J.**

**Dr. B.R.Sarangi, J.** I agree.

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**Dr.B.R.Sarangi, J.**

Orissa High Court, Cuttack  
5<sup>th</sup> August, 2013/ **B.K.Panda**